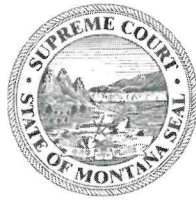


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Legislative History – Montana Session Law

Chapter: 153 Session L: 2009

Bill Number: SB 82

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☐
Fiscal Note	☒
Third Reading Bill	☐
Final Version of Bill	☐

House	Senate
Committee: Human Services	Committee: Public Health, Welfare, and Safety
Hearing Date(s): 3/4/2009	Hearing Date(s): 1/23/2009
Committee Report:	Committee Report:

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by:

Date:

Notes:

S. Marshall

5/30/24

Bill Draft Number: LC0350**Bill Type - Number:** SB 82**Short Title:** Clarify Medicaid third party liability**Primary Sponsor:** Donald J Steinbeisser (R) SD 19**Chapter Number:** 153**Bill Actions - Current Bill Progress:** Became Law**Bill Action Count:** 50

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/03/2009			
(S) Signed by Governor	04/03/2009			
(S) Transmitted to Governor	03/26/2009			
(H) Signed by Speaker	03/26/2009			
(S) Signed by President	03/25/2009			
(C) Printed - New Version Available	03/24/2009			
(S) Returned from Enrolling	03/24/2009			
(S) Sent to Enrolling	03/23/2009			
(H) Returned to Senate	03/23/2009			
(H) 3rd Reading Concurred	03/23/2009	98	2	
(H) Scheduled for 3rd Reading	03/23/2009			
(H) 2nd Reading Concurred	03/21/2009	93	6	
(H) Scheduled for 2nd Reading	03/21/2009			
(H) 2nd Reading Pass Consideration	03/20/2009			
(H) Scheduled for 2nd Reading	03/20/2009			
(H) Committee Report--Bill Concurred	03/12/2009			(H) Human Services
(H) Committee Executive Action--Bill Concurred	03/12/2009	16	0	(H) Human Services
(H) Hearing	03/04/2009			(H) Human Services
(H) Referred to Committee	01/29/2009			(H) Human Services
(H) First Reading	01/29/2009			
(S) Transmitted to House	01/28/2009			
(S) 3rd Reading Passed	01/28/2009	50	0	
(S) Scheduled for 3rd Reading	01/28/2009			
(S) 2nd Reading Passed on Voice Vote	01/27/2009	50	0	
(S) Scheduled for 2nd Reading	01/27/2009			
(S) Committee Report--Bill Passed	01/24/2009			(S) Public Health, Welfare and Safety
(S) Committee Executive Action--Bill Passed	01/24/2009	7	0	(S) Public Health, Welfare and Safety
(S) Hearing	01/23/2009			(S) Public Health, Welfare and Safety

(S) Fiscal Note Printed	01/06/2009	
(S) Fiscal Note Signed	01/06/2009	
(S) First Reading	01/05/2009	
(S) Fiscal Note Received	01/03/2009	
(S) Referred to Committee	12/20/2008	(S) Public Health, Welfare and Safety
(S) Fiscal Note Requested	12/17/2008	
(C) Introduced Bill Text Available Electronically	12/16/2008	
(S) Introduced	12/16/2008	
(C) Pre-Introduction Letter Sent	12/08/2008	
(C) Draft in Assembly/Executive Director Review	12/08/2008	
(C) Draft in Final Drafter Review	12/08/2008	
(C) Bill Draft Text Available Electronically	12/05/2008	
(C) Draft in Input/Proofing	12/05/2008	
(C) Draft to Drafter - Edit Review [SAB]	12/05/2008	
(C) Draft in Edit	12/05/2008	
(C) Draft in Legal Review	12/04/2008	
(C) Draft to Requester for Review	12/04/2008	
(C) Draft to Requester for Review	11/20/2008	
(C) Draft to Requester for Review	11/20/2008	
(C) Draft On Hold	10/09/2008	
(C) Fiscal Note Probable	08/25/2008	
(C) Draft Request Received	08/25/2008	

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Children, Families, Health, and Human Services Interim Committee		
Drafter	Jackson	Lisa Mecklenberg	
By Request Of	Department of Public Health and Human Services		
Primary Sponsor	Steinbeisser	Donald	J

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Federal Government		Simple	FED
Health Care Services (see also: Health)		Simple	HLTC
Liability (see also: Remedies; Torts)		Simple	LIA

Additional Bill Information

Fiscal Note Probable: Yes

Preintroduction Required: Y

Session Law Ch. Number: 153

DEADLINE

Category: General Bills

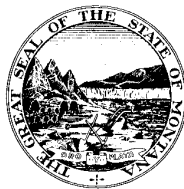
Transmittal Date: 02/26/2009

Return (with 2nd house amendments) Date: 04/02/2009

Section Effective Dates

Section(s) Effective Date Date Qualified

All Sections 01-JUL-09



AN ACT GENERALLY REVISING LAWS RELATING TO RECOVERY OF MEDICAID BENEFITS FOR SERVICES PAID ON BEHALF OF MEDICAID RECIPIENTS; REMOVING THE COUNTY FROM THE RECOVERY OF MEDICAID BENEFITS PROCESS; PROVIDING DEFINITIONS; AMENDING SECTIONS 53-2-612, 53-6-165, 53-6-167, 53-6-168, AND 53-6-178, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-2-612, MCA, is amended to read:

"53-2-612. Lien of department ~~or county~~ upon third-party recoveries. (1) Upon notice by the department, ~~a county~~, or the recipient to a third party or the third party's insurer as provided in subsection (5)(b), the department ~~or county~~ has a lien upon ~~all~~ money paid by a third party or the third party's insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department ~~or county~~ has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability and to the extent that the money represents payment for medical expenses.

(2) The department ~~or county~~ may, in the name of the recipient on whose behalf medical assistance has been paid by the department ~~or county~~, commence and prosecute to final conclusion any action that may be necessary to recover from a third party or the third party's insurer compensation or damages for medical assistance paid by the department ~~or county~~ on behalf of the recipient. This section does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages or compensation in the recipient's own name in accordance with the provisions of this section.

(3) (a) The lien:

~~—— (i) applies to all money paid by a third party or a third party's insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and~~

~~—— (ii) is subordinate to the lien of an attorney under 37-61-420.~~

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from

a third party or a third party's insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department ~~or county~~ under any public assistance program.

(c) From the amount collected by the department, ~~county~~, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the department ~~or county~~ and the recipient agree to a different settlement, the amount previously paid as medical assistance by the department ~~or county~~, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department ~~or county~~, but only to the extent that the amount paid as medical assistance does not exceed the portion of the amount collected that represents payment of medical expenses. The remainder, if any, must be paid to the recipient.

(d) In all cases of payment to the department ~~or county~~ out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department ~~or county~~ may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department ~~or county~~ receives full or partial payment of its lien.

(e) (i) Except as provided in subsections (3)(e)~~(i)~~(ii) and (3)(e)~~(ii)~~(iii), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

~~(i)~~(ii) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.

~~(ii)~~(iii) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(4) (a) A recipient of medical assistance or the recipient's legal representative shall notify the department ~~or county~~ by certified letter within 30 days if the recipient or the recipient's legal representative asserts a claim against a third party or a third party's insurer for damages or compensation for a personal injury, disease, illness,

or disability for which the department ~~or county~~ paid medical assistance in whole or in part or for which the recipient has applied for medical assistance. The notice must be mailed to the director of the department ~~or the county commissioners of the county that paid medical assistance~~. At the same time, a copy must be sent by certified mail to the third party or the third party's insurer.

(b) The notice must contain the following information:

- (i) the name and address of the recipient and the recipient's legal representative, if any;
- (ii) the name and address of the third party alleged to be liable to the recipient;
- (iii) the name and address of any known insurer of the third party; and
- (iv) the judicial district and docket number of any action filed.

(c) A recipient or the recipient's legal representative who has received actual notice that the department ~~or county~~ has paid medical assistance is liable to the department ~~or county~~ for the amount it is entitled to receive under this section if:

(i) the recipient or the recipient's legal representative fails to timely notify the department ~~or county~~ or fails to mail a copy of the notice to the third party or the third party's insurer; and

(ii) a third party or the third party's insurer that did not receive notice from the department ~~or county~~ as provided for in subsection (5)(b) pays the recipient or the recipient's legal representative without satisfying any lien of the department ~~or county~~.

(5) (a) If a third party or the third party's insurer that has received notice of the department's ~~or county's~~ lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's claim without first satisfying the lien of the department ~~or county~~, the third party or the third party's insurer is liable to the department ~~or county~~ for the amount the department ~~or county~~ is entitled to receive under this section.

(b) For the purposes of subsection (5)(a), a third party or the third party's insurer has been given notice if:

(i) the department ~~or county~~ mails, by certified mail, to the third party or the third party's insurer:

(A) a statement of the medical assistance paid or that may be paid by the department ~~or county~~ on behalf of the recipient; and

(B) a claim for reimbursement;

(ii) the recipient or the recipient's legal representative mails, by certified mail, to the third party or the third party's insurer:

- (A) a copy of the notice required by subsection (4)(a); or
- (B) a statement stating that the recipient has applied for or has received medical assistance from the department ~~or county~~ in connection with the same claim; or
- (iii) the recipient or the recipient's legal representative has commenced an action against the third party or the third party's insurer for damages or compensation for personal injury, disease, illness, or disability for which the department ~~or county~~ has paid or may pay medical assistance, in whole or in part, and the department ~~or county~~ files in the court in which the action is pending a notice of lien stating that a lien is claimed for medical assistance on any money paid in satisfaction of any judgment in or settlement of the action and that:
 - (A) medical assistance in a stated amount has been paid by the department ~~or county~~ on behalf of the recipient; or
 - (B) medical assistance may be paid on behalf of the recipient.
- (6) As used in this section, the following definitions apply:
 - ~~(a)~~ "County" means a county that has provided medical assistance to a recipient through an indigent assistance program operated at the option of the county.
 - ~~(b)~~(a) "Legal representative" means an attorney having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or a third party's insurer.
 - ~~(c)~~(b) "Recipient" means a person on whose behalf the department ~~or a county~~ has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.
 - ~~(d)~~(c) "Third party" means an individual, institution, corporation, or public or private agency that is or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient of medical assistance from the department ~~or a county~~ and includes but is not limited to insurers, health service organizations, and parties liable or who may be liable in tort."

Section 2. Section 53-6-165, MCA, is amended to read:

"53-6-165. Definitions. As used in this part, unless expressly provided otherwise, the following definitions apply:

- (1) "Department" means the department of public health and human services provided for in 2-15-2201.
- (2) "Financial institution" means any organization in the business of moving, investing, or lending money,

dealing in financial instruments, or providing financial services, including but not limited to federally chartered and state-chartered banks, savings and loan associations, and credit unions.

~~(2)~~(3) "Recipient" means an individual who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who has received benefits, whether or not that person has been determined to be eligible.

~~(3)~~(4) (a) "Recoverable medical assistance" means a payment pursuant to this part, including but not limited to a payment made for items or services provided to and insurance premiums, deductibles, and coinsurance paid on behalf of a recipient who:

~~(a)~~(i) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility for the developmentally disabled, or institution for mental disease and, with respect to that institutionalization, the department determined under 53-6-171 that the person was not reasonably expected to be discharged and return home; or

~~(b)~~(ii) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended, when the item or service was provided or when the insurance premium, deductible, or coinsurance was paid.

(b) The term does not include medical assistance for medicare cost-sharing or for benefits described in 42 U.S.C. 1396a(a)(10)(E).

~~(4)~~(5) "Recovery" means legal action brought for the payment or repayment of recoverable medical assistance or amounts of money paid for other purposes."

Section 3. Section 53-6-167, MCA, is amended to read:

"53-6-167. Recovery of medicaid benefits after recipient's death. (1) After Except as provided in subsection (7) or (9)(b), after the death of a recipient, the department shall execute and present a claim:

~~——(a)~~ against the recipient's estate, within the time specified in the published notice to creditors in the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the recipient; ~~and. The department is not required to initiate probate proceedings in order to present a claim in a case in which no proceeding has been commenced to probate the estate of the deceased recipient.~~

~~(b)~~(2) Except as prohibited by subsection (9)(b), after the death of a recipient, the department may execute and present a claim against a person who has received property of the recipient by distribution or survival for an amount equal to the recoverable medical assistance paid on behalf of the recipient or the value of the

property received by the person from the recipient by distribution or survival, whichever is less. The amount recoverable from a person with respect to property of the recipient must be reduced by the value of any property transferred to the person for less than full market value for which a period of ineligibility was imposed under 53-6-166 against the recipient during the recipient's life. The department may bring an action in district court to collect upon a claim under this subsection ~~(1)(b)~~ (2).

~~(2)(3)~~ A department claim under subsection (1) or (2) must include notice of the right to seek an undue hardship exception under rules adopted by the department in accordance with subsection ~~(7)~~ (8).

~~(3)(4)~~ (a) Notwithstanding any statute of limitations or other claim presentation deadline provided by law, a department claim against an estate is not barred for lack of timely presentation if it is presented in the probate proceeding within the time specified in the published notice to creditors.

(b) An action to collect a claim under subsection ~~(1)(b)~~ (2) must be commenced within 3 years of the later of the recipient's death or the closing of the recipient's estate.

~~(4)(5)~~ (a) For purposes of this section, property of a deceased recipient received by distribution or survival is any real or personal property or other assets in which the recipient had any right, title, or interest immediately prior to the time of death, including but not limited to assets passing to one or more survivors, heirs, assignees, or beneficiaries of the deceased recipient through joint tenancy, tenancy in common, right of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement. For purposes of this section, property is not received by distribution or survival to the extent that the person received the property or property interest for consideration equal to the fair market value of the property or property interest received.

(b) Property received by distribution includes but is not limited to:

(i) property from a deceased recipient's estate distributed to a person through a probated estate or a small estate administration procedure; and

(ii) property from a deceased recipient's estate otherwise distributed to or in the possession of a person through any other procedure or when a legal procedure for distribution has not been followed.

(c) Assets of a deceased recipient's estate and property of a deceased recipient received by distribution or survival are not exempt from recovery under this section because the assets or property were or may have been considered by the department as exempt income or resources for the purpose of determining eligibility for medical assistance during the recipient's lifetime.

~~(5)(6)~~ (a) The department may seek recovery under ~~subsection (1)(a) or (1)(b)~~ subsection (1) or (2), or both, with respect to a deceased recipient until its claim is satisfied in full. Upon full satisfaction of its claim, the department may not seek further recovery and shall provide appropriate releases to the deceased recipient's estate and to other affected persons.

(b) An estate or other person is not entitled to a reduction or waiver of the department's claim on the grounds that there is or may be another person from whom recovery may be made under this section.

~~(6)(7)~~ The department may waive recovery under this section if it determines that recovery would not be cost-effective. In determining whether recovery would be cost-effective for purposes of this subsection, the department may consider but is not limited to consideration of the following factors:

- (a) the estimated cost of recovery;
- (b) the amount reasonably likely to be recovered;
- (c) the likelihood that recovery by the department will cause a person to become eligible for public assistance; and
- (d) the importance of the case or the issues in the case and the need for judicial interpretation of issues that may recur with respect to the administration or implementation of this section.

~~(7)(8)~~ (a) Upon presentation or assertion of a claim by the department under this section, the personal representative of the estate or another affected person may apply to the department, in accordance with procedures established by department rule, for a waiver of recovery based on undue hardship. The department shall waive its recovery under this section in whole or in part if it determines that recovery would result in undue hardship as defined by department rule.

(b) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be amended, and that implement federal regulations and policies, establishing procedures and criteria for undue hardship exceptions. The rules adopted under this section must include but are not limited to rules addressing the following:

- (i) a description of the circumstances considered to constitute an undue hardship;
- (ii) the procedures by which an individual may seek an undue hardship exception;
- (iii) the persons entitled to an undue hardship exception; and
- (iv) whether an exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted.

(c) If a person is aggrieved by a department determination on an application for an undue hardship exception, the person may assert a claim of entitlement to an undue hardship exception in any court proceeding on a department petition for allowance of an estate claim or for recovery of an amount due under this section. When a person claims entitlement to an undue hardship exception in the proceeding, the court shall make a determination on the claim for an exception based upon the department rules adopted in accordance with this section. Department denial of all or any part of the relief requested in an exception application under this section may be reviewed by a district court only as provided in this subsection ~~(e)~~ (8)(c). Denial does not grant a right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure Act or the department's rules.

~~(9)(9)~~ (a) Except as provided in subsection ~~(9)(b)~~ (9)(b), if the requirements of this section are met, the department may collect upon its claim.

(b) The department may not recover under this section while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection ~~(b)~~ (9)(b) does not preclude the department from recovering from the recipient's estate after the death of the surviving spouse or child.

~~(9)(10)~~ All money recovered under this section from any source must be distributed to the state general fund and to the United States as required by applicable state and federal laws and regulations."

Section 4. Section 53-6-168, MCA, is amended to read:

"53-6-168. Payment of certain funds of deceased recipient to department. (1) (a) A nursing facility, a financial institution, or a person, ~~other than a financial institution~~, holding personal funds of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days following the resident's death, pay those funds to the department.

(b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the deceased resident's personal funds that are held by the nursing facility and that would have been payable to the facility from the resident's funds. The facility shall pay the remaining funds to the department as required by this section.

(c) Funds paid to the department under this section are not considered to be property of the deceased resident's estate, and 53-6-167 does not apply to recovery of the funds by the department.

(2) For purposes of this section, a nursing facility is holding personal funds of a resident if the facility:

- (a) maintains possession of the funds in the facility; or
- (b) as the recipient's trustee or representative, has deposited the resident's funds in an individual or shared account in a financial institution.

(3) The department shall apply any funds received under this section proportionately to the federal and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled by law to the funds."

Section 5. Section 53-6-178, MCA, is amended to read:

"53-6-178. Department right of recovery -- limitations. (1) Except as provided in 53-6-180, 53-6-182, and this section, the department may collect upon its lien as provided in 53-6-171 through 53-6-188.

(2) The department may not recover upon a lien imposed on the recipient's home under 53-6-171 while the recipient's sibling or child who has resided lawfully and continuously in the home for at least ~~1 year~~ 18 months immediately before the recipient's institutionalization continues to lawfully reside in the home. This subsection does not preclude the department from recovering under 53-6-167, 53-6-168, or 53-6-169.

(3) The department may not recover on a lien imposed under 53-6-171 while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection does not preclude the department from later recovery in accordance with 53-6-181."

Section 6. Effective date. [This act] is effective July 1, 2009.

- END -

I hereby certify that the within bill,
SB 0082, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 82

INTRODUCED BY D. STEINBEISSER

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

AN ACT GENERALLY REVISING LAWS RELATING TO RECOVERY OF MEDICAID BENEFITS FOR SERVICES PAID ON BEHALF OF MEDICAID RECIPIENTS; REMOVING THE COUNTY FROM THE RECOVERY OF MEDICAID BENEFITS PROCESS; PROVIDING DEFINITIONS; AMENDING SECTIONS 53-2-612, 53-6-165, 53-6-167, 53-6-168, AND 53-6-178, MCA; AND PROVIDING AN EFFECTIVE DATE.

SENATE BILL NO. 82

INTRODUCED BY D. STEINBEISSER

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO RECOVERY OF MEDICAID BENEFITS FOR SERVICES PAID ON BEHALF OF MEDICAID RECIPIENTS; REMOVING THE COUNTY FROM THE RECOVERY OF MEDICAID BENEFITS PROCESS; PROVIDING DEFINITIONS; AMENDING SECTIONS 53-2-612, 53-6-165, 53-6-167, 53-6-168, AND 53-6-178, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-2-612, MCA, is amended to read:

"53-2-612. Lien of department ~~or county~~ upon third-party recoveries. (1) Upon notice by the department, ~~a county~~, or the recipient to a third party or the third party's insurer as provided in subsection (5)(b), the department ~~or county~~ has a lien upon all money paid by a third party or the third party's insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department ~~or county~~ has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability and to the extent that the money represents payment for medical expenses.

(2) The department ~~or county~~ may, in the name of the recipient on whose behalf medical assistance has been paid by the department ~~or county~~, commence and prosecute to final conclusion any action that may be necessary to recover from a third party or the third party's insurer compensation or damages for medical assistance paid by the department ~~or county~~ on behalf of the recipient. This section does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages or compensation in the recipient's own name in accordance with the provisions of this section.

(3) (a) The lien:

~~—— (i) applies to all money paid by a third party or a third party's insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and~~

~~—— (ii) is subordinate to the lien of an attorney under 37-61-420.~~

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from

a third party or a third party's insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department ~~or county~~ under any public assistance program.

(c) From the amount collected by the department, ~~county~~, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the department ~~or county~~ and the recipient agree to a different settlement, the amount previously paid as medical assistance by the department ~~or county~~, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department ~~or county~~, but only to the extent that the amount paid as medical assistance does not exceed the portion of the amount collected that represents payment of medical expenses. The remainder, if any, must be paid to the recipient.

(d) In all cases of payment to the department ~~or county~~ out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department ~~or county~~ may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department ~~or county~~ receives full or partial payment of its lien.

(e) (i) Except as provided in subsections (3)(e)~~(i)~~(ii) and (3)(e)~~(ii)~~(iii), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

~~(i)~~(ii) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.

~~(ii)~~(iii) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(4) (a) A recipient of medical assistance or the recipient's legal representative shall notify the department ~~or county~~ by certified letter within 30 days if the recipient or the recipient's legal representative asserts a claim against a third party or a third party's insurer for damages or compensation for a personal injury, disease, illness, or disability for which the department ~~or county~~ paid medical assistance in whole or in part or for which the recipient has applied for medical assistance. The notice must be mailed to the director of the department ~~or the~~

~~county commissioners of the county that paid medical assistance.~~ At the same time, a copy must be sent by certified mail to the third party or the third party's insurer.

(b) The notice must contain the following information:

- (i) the name and address of the recipient and the recipient's legal representative, if any;
- (ii) the name and address of the third party alleged to be liable to the recipient;
- (iii) the name and address of any known insurer of the third party; and
- (iv) the judicial district and docket number of any action filed.

(c) A recipient or the recipient's legal representative who has received actual notice that the department ~~or county~~ has paid medical assistance is liable to the department ~~or county~~ for the amount it is entitled to receive under this section if:

- (i) the recipient or the recipient's legal representative fails to timely notify the department ~~or county~~ or fails to mail a copy of the notice to the third party or the third party's insurer; and
- (ii) a third party or the third party's insurer that did not receive notice from the department ~~or county~~ as provided for in subsection (5)(b) pays the recipient or the recipient's legal representative without satisfying any lien of the department ~~or county~~.

(5) (a) If a third party or the third party's insurer that has received notice of the department's ~~or county's~~ lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's claim without first satisfying the lien of the department ~~or county~~, the third party or the third party's insurer is liable to the department ~~or county~~ for the amount the department ~~or county~~ is entitled to receive under this section.

(b) For the purposes of subsection (5)(a), a third party or the third party's insurer has been given notice if:

- (i) the department ~~or county~~ mails, by certified mail, to the third party or the third party's insurer:
 - (A) a statement of the medical assistance paid or that may be paid by the department ~~or county~~ on behalf of the recipient; and
 - (B) a claim for reimbursement;
- (ii) the recipient or the recipient's legal representative mails, by certified mail, to the third party or the third party's insurer:
 - (A) a copy of the notice required by subsection (4)(a); or
 - (B) a statement stating that the recipient has applied for or has received medical assistance from the department ~~or county~~ in connection with the same claim; or
- (iii) the recipient or the recipient's legal representative has commenced an action against the third party

or the third party's insurer for damages or compensation for personal injury, disease, illness, or disability for which the department ~~or county~~ has paid or may pay medical assistance, in whole or in part, and the department ~~or county~~ files in the court in which the action is pending a notice of lien stating that a lien is claimed for medical assistance on any money paid in satisfaction of any judgment in or settlement of the action and that:

(A) medical assistance in a stated amount has been paid by the department ~~or county~~ on behalf of the recipient; or

(B) medical assistance may be paid on behalf of the recipient.

(6) As used in this section, the following definitions apply:

~~(a) "County" means a county that has provided medical assistance to a recipient through an indigent assistance program operated at the option of the county.~~

~~(b)~~(a) "Legal representative" means an attorney having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or a third party's insurer.

~~(c)~~(b) "Recipient" means a person on whose behalf the department ~~or a county~~ has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

~~(d)~~(c) "Third party" means an individual, institution, corporation, or public or private agency that is or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient of medical assistance from the department ~~or a county~~ and includes but is not limited to insurers, health service organizations, and parties liable or who may be liable in tort."

Section 2. Section 53-6-165, MCA, is amended to read:

"53-6-165. Definitions. As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Financial institution" means any organization in the business of moving, investing, or lending money, dealing in financial instruments, or providing financial services, including but not limited to federally chartered and state-chartered banks, savings and loan associations, and credit unions.

~~(2)~~(3) "Recipient" means an individual who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who has received benefits, whether or not that person has been determined to be eligible.

~~(3)~~(4) (a) "Recoverable medical assistance" means a payment pursuant to this part, including but not

limited to a payment made for items or services provided to and insurance premiums, deductibles, and coinsurance paid on behalf of a recipient who:

~~(a)~~(i) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility for the developmentally disabled, or institution for mental disease and, with respect to that institutionalization, the department determined under 53-6-171 that the person was not reasonably expected to be discharged and return home; or

~~(b)~~(ii) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended, when the item or service was provided or when the insurance premium, deductible, or coinsurance was paid.

(b) The term does not include medical assistance for medicare cost-sharing or for benefits described in 42 U.S.C. 1396a(a)(10)(E).

~~(4)~~(5) "Recovery" means legal action brought for the payment or repayment of recoverable medical assistance or amounts of money paid for other purposes."

Section 3. Section 53-6-167, MCA, is amended to read:

"53-6-167. Recovery of medicaid benefits after recipient's death. (1) After Except as provided in subsection (7) or (9)(b), after the death of a recipient, the department shall execute and present a claim:

———~~(a)~~ against the recipient's estate, within the time specified in the published notice to creditors in the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the recipient;~~and, The department is not required to initiate probate proceedings in order to present a claim in a case in which no proceeding has been commenced to probate the estate of the deceased recipient.~~

~~(b)~~(2) Except as prohibited by subsection (9)(b), after the death of a recipient, the department may execute and present a claim against a person who has received property of the recipient by distribution or survival for an amount equal to the recoverable medical assistance paid on behalf of the recipient or the value of the property received by the person from the recipient by distribution or survival, whichever is less. The amount recoverable from a person with respect to property of the recipient must be reduced by the value of any property transferred to the person for less than full market value for which a period of ineligibility was imposed under 53-6-166 against the recipient during the recipient's life. The department may bring an action in district court to collect upon a claim under this subsection ~~(1)(b)~~ (2).

~~(2)~~(3) A department claim under subsection (1) or (2) must include notice of the right to seek an undue hardship exception under rules adopted by the department in accordance with subsection ~~(7)~~ (8).

~~(3)~~(4) (a) Notwithstanding any statute of limitations or other claim presentation deadline provided by law,

a department claim against an estate is not barred for lack of timely presentation if it is presented in the probate proceeding within the time specified in the published notice to creditors.

(b) An action to collect a claim under subsection ~~(1)(b)~~ (2) must be commenced within 3 years of the later of the recipient's death or the closing of the recipient's estate.

~~(4)(5)~~ (a) For purposes of this section, property of a deceased recipient received by distribution or survival is any real or personal property or other assets in which the recipient had any right, title, or interest immediately prior to the time of death, including but not limited to assets passing to one or more survivors, heirs, assignees, or beneficiaries of the deceased recipient through joint tenancy, tenancy in common, right of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement. For purposes of this section, property is not received by distribution or survival to the extent that the person received the property or property interest for consideration equal to the fair market value of the property or property interest received.

(b) Property received by distribution includes but is not limited to:

(i) property from a deceased recipient's estate distributed to a person through a probated estate or a small estate administration procedure; and

(ii) property from a deceased recipient's estate otherwise distributed to or in the possession of a person through any other procedure or when a legal procedure for distribution has not been followed.

(c) Assets of a deceased recipient's estate and property of a deceased recipient received by distribution or survival are not exempt from recovery under this section because the assets or property were or may have been considered by the department as exempt income or resources for the purpose of determining eligibility for medical assistance during the recipient's lifetime.

~~(5)(6)~~ (a) The department may seek recovery under ~~subsection (1)(a) or (1)(b)~~ subsection (1) or (2), or both, with respect to a deceased recipient until its claim is satisfied in full. Upon full satisfaction of its claim, the department may not seek further recovery and shall provide appropriate releases to the deceased recipient's estate and to other affected persons.

(b) An estate or other person is not entitled to a reduction or waiver of the department's claim on the grounds that there is or may be another person from whom recovery may be made under this section.

~~(6)(7)~~ The department may waive recovery under this section if it determines that recovery would not be cost-effective. In determining whether recovery would be cost-effective for purposes of this subsection, the department may consider but is not limited to consideration of the following factors:

(a) the estimated cost of recovery;

(b) the amount reasonably likely to be recovered;

(c) the likelihood that recovery by the department will cause a person to become eligible for public assistance; and

(d) the importance of the case or the issues in the case and the need for judicial interpretation of issues that may recur with respect to the administration or implementation of this section.

~~(7)~~(8) (a) Upon presentation or assertion of a claim by the department under this section, the personal representative of the estate or another affected person may apply to the department, in accordance with procedures established by department rule, for a waiver of recovery based on undue hardship. The department shall waive its recovery under this section in whole or in part if it determines that recovery would result in undue hardship as defined by department rule.

(b) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be amended, and that implement federal regulations and policies, establishing procedures and criteria for undue hardship exceptions. The rules adopted under this section must include but are not limited to rules addressing the following:

(i) a description of the circumstances considered to constitute an undue hardship;

(ii) the procedures by which an individual may seek an undue hardship exception;

(iii) the persons entitled to an undue hardship exception; and

(iv) whether an exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted.

(c) If a person is aggrieved by a department determination on an application for an undue hardship exception, the person may assert a claim of entitlement to an undue hardship exception in any court proceeding on a department petition for allowance of an estate claim or for recovery of an amount due under this section. When a person claims entitlement to an undue hardship exception in the proceeding, the court shall make a determination on the claim for an exception based upon the department rules adopted in accordance with this section. Department denial of all or any part of the relief requested in an exception application under this section may be reviewed by a district court only as provided in this subsection ~~(e)~~ (8)(c). Denial does not grant a right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure Act or the department's rules.

~~(8)~~(9) (a) Except as provided in subsection ~~(8)(b)~~ (9)(b), if the requirements of this section are met, the department may collect upon its claim.

(b) The department may not recover under this section while there is a surviving spouse of the recipient

or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection ~~(b)~~ (9)(b) does not preclude the department from recovering from the recipient's estate after the death of the surviving spouse or child.

~~(9)~~(10) All money recovered under this section from any source must be distributed to the state general fund and to the United States as required by applicable state and federal laws and regulations."

Section 4. Section 53-6-168, MCA, is amended to read:

"53-6-168. Payment of certain funds of deceased recipient to department. (1) (a) A nursing facility, a financial institution, or a person, ~~other than a financial institution~~, holding personal funds of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days following the resident's death, pay those funds to the department.

(b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the deceased resident's personal funds that are held by the nursing facility and that would have been payable to the facility from the resident's funds. The facility shall pay the remaining funds to the department as required by this section.

(c) Funds paid to the department under this section are not considered to be property of the deceased resident's estate, and 53-6-167 does not apply to recovery of the funds by the department.

(2) For purposes of this section, a nursing facility is holding personal funds of a resident if the facility:

(a) maintains possession of the funds in the facility; or

(b) as the recipient's trustee or representative, has deposited the resident's funds in an individual or shared account in a financial institution.

(3) The department shall apply any funds received under this section proportionately to the federal and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled by law to the funds."

Section 5. Section 53-6-178, MCA, is amended to read:

"53-6-178. Department right of recovery -- limitations. (1) Except as provided in 53-6-180, 53-6-182, and this section, the department may collect upon its lien as provided in 53-6-171 through 53-6-188.

(2) The department may not recover upon a lien imposed on the recipient's home under 53-6-171 while the recipient's sibling or child who has resided lawfully and continuously in the home for at least ~~1 year~~ 18 months immediately before the recipient's institutionalization continues to lawfully reside in the home. This subsection does not preclude the department from recovering under 53-6-167, 53-6-168, or 53-6-169.

(3) The department may not recover on a lien imposed under 53-6-171 while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection does not preclude the department from later recovery in accordance with 53-6-181."

NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2009.

- END -



AN ACT GENERALLY REVISING LAWS RELATING TO RECOVERY OF MEDICAID BENEFITS FOR SERVICES PAID ON BEHALF OF MEDICAID RECIPIENTS; REMOVING THE COUNTY FROM THE RECOVERY OF MEDICAID BENEFITS PROCESS; PROVIDING DEFINITIONS; AMENDING SECTIONS 53-2-612, 53-6-165, 53-6-167, 53-6-168, AND 53-6-178, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-2-612, MCA, is amended to read:

"53-2-612. Lien of department ~~or county~~ upon third-party recoveries. (1) Upon notice by the department, ~~a county~~, or the recipient to a third party or the third party's insurer as provided in subsection (5)(b), the department ~~or county~~ has a lien upon all money paid by a third party or the third party's insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department ~~or county~~ has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability and to the extent that the money represents payment for medical expenses.

(2) The department ~~or county~~ may, in the name of the recipient on whose behalf medical assistance has been paid by the department ~~or county~~, commence and prosecute to final conclusion any action that may be necessary to recover from a third party or the third party's insurer compensation or damages for medical assistance paid by the department ~~or county~~ on behalf of the recipient. This section does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages or compensation in the recipient's own name in accordance with the provisions of this section.

(3) (a) The lien:

~~—— (i) applies to all money paid by a third party or a third party's insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and~~

~~—— (ii) is subordinate to the lien of an attorney under 37-61-420.~~

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or a third party's insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department ~~or county~~ under any public

assistance program.

(c) From the amount collected by the department, ~~county~~, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the department ~~or county~~ and the recipient agree to a different settlement, the amount previously paid as medical assistance by the department ~~or county~~, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department ~~or county~~, but only to the extent that the amount paid as medical assistance does not exceed the portion of the amount collected that represents payment of medical expenses. The remainder, if any, must be paid to the recipient.

(d) In all cases of payment to the department ~~or county~~ out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department ~~or county~~ may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department ~~or county~~ receives full or partial payment of its lien.

(e) (i) Except as provided in subsections (3)(e)~~(i)~~(ii) and (3)(e)~~(ii)~~(iii), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

~~(i)~~(ii) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.

~~(ii)~~(iii) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(4) (a) A recipient of medical assistance or the recipient's legal representative shall notify the department ~~or county~~ by certified letter within 30 days if the recipient or the recipient's legal representative asserts a claim against a third party or a third party's insurer for damages or compensation for a personal injury, disease, illness, or disability for which the department ~~or county~~ paid medical assistance in whole or in part or for which the recipient has applied for medical assistance. The notice must be mailed to the director of the department ~~or the county commissioners of the county that paid medical assistance~~. At the same time, a copy must be sent by

certified mail to the third party or the third party's insurer.

(b) The notice must contain the following information:

- (i) the name and address of the recipient and the recipient's legal representative, if any;
- (ii) the name and address of the third party alleged to be liable to the recipient;
- (iii) the name and address of any known insurer of the third party; and
- (iv) the judicial district and docket number of any action filed.

(c) A recipient or the recipient's legal representative who has received actual notice that the department ~~or county~~ has paid medical assistance is liable to the department ~~or county~~ for the amount it is entitled to receive under this section if:

(i) the recipient or the recipient's legal representative fails to timely notify the department ~~or county~~ or fails to mail a copy of the notice to the third party or the third party's insurer; and

(ii) a third party or the third party's insurer that did not receive notice from the department ~~or county~~ as provided for in subsection (5)(b) pays the recipient or the recipient's legal representative without satisfying any lien of the department ~~or county~~.

(5) (a) If a third party or the third party's insurer that has received notice of the department's ~~or county's~~ lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's claim without first satisfying the lien of the department ~~or county~~, the third party or the third party's insurer is liable to the department ~~or county~~ for the amount the department ~~or county~~ is entitled to receive under this section.

(b) For the purposes of subsection (5)(a), a third party or the third party's insurer has been given notice if:

(i) the department ~~or county~~ mails, by certified mail, to the third party or the third party's insurer:

(A) a statement of the medical assistance paid or that may be paid by the department ~~or county~~ on behalf of the recipient; and

(B) a claim for reimbursement;

(ii) the recipient or the recipient's legal representative mails, by certified mail, to the third party or the third party's insurer:

(A) a copy of the notice required by subsection (4)(a); or

(B) a statement stating that the recipient has applied for or has received medical assistance from the department ~~or county~~ in connection with the same claim; or

(iii) the recipient or the recipient's legal representative has commenced an action against the third party

or the third party's insurer for damages or compensation for personal injury, disease, illness, or disability for which the department ~~or county~~ has paid or may pay medical assistance, in whole or in part, and the department ~~or county~~ files in the court in which the action is pending a notice of lien stating that a lien is claimed for medical assistance on any money paid in satisfaction of any judgment in or settlement of the action and that:

(A) medical assistance in a stated amount has been paid by the department ~~or county~~ on behalf of the recipient; or

(B) medical assistance may be paid on behalf of the recipient.

(6) As used in this section, the following definitions apply:

~~(a) "County" means a county that has provided medical assistance to a recipient through an indigent assistance program operated at the option of the county.~~

~~(b)~~(a) "Legal representative" means an attorney having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or a third party's insurer.

~~(e)~~(b) "Recipient" means a person on whose behalf the department ~~or a county~~ has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

~~(d)~~(c) "Third party" means an individual, institution, corporation, or public or private agency that is or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient of medical assistance from the department ~~or a county~~ and includes but is not limited to insurers, health service organizations, and parties liable or who may be liable in tort."

Section 2. Section 53-6-165, MCA, is amended to read:

"53-6-165. Definitions. As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Financial institution" means any organization in the business of moving, investing, or lending money, dealing in financial instruments, or providing financial services, including but not limited to federally chartered and state-chartered banks, savings and loan associations, and credit unions.

~~(2)~~(3) "Recipient" means an individual who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who has received benefits, whether or not that person has been determined to be eligible.

~~(3)~~(4) (a) "Recoverable medical assistance" means a payment pursuant to this part, including but not limited to a payment made for items or services provided to and insurance premiums, deductibles, and coinsurance paid on behalf of a recipient who:

~~(a)~~(i) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility for the developmentally disabled, or institution for mental disease and, with respect to that institutionalization, the department determined under 53-6-171 that the person was not reasonably expected to be discharged and return home; or

~~(b)~~(ii) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended, when the item or service was provided or when the insurance premium, deductible, or coinsurance was paid.

(b) The term does not include medical assistance for medicare cost-sharing or for benefits described in 42 U.S.C. 1396a(a)(10)(E).

~~(4)~~(5) "Recovery" means legal action brought for the payment or repayment of recoverable medical assistance or amounts of money paid for other purposes."

Section 3. Section 53-6-167, MCA, is amended to read:

"53-6-167. Recovery of medicaid benefits after recipient's death. (1) After Except as provided in subsection (7) or (9)(b), after the death of a recipient, the department shall execute and present a claim:

———~~(a)~~ against the recipient's estate, within the time specified in the published notice to creditors in the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the recipient; ~~and. The department is not required to initiate probate proceedings in order to present a claim in a case in which no proceeding has been commenced to probate the estate of the deceased recipient.~~

~~(b)~~(2) Except as prohibited by subsection (9)(b), after the death of a recipient, the department may execute and present a claim against a person who has received property of the recipient by distribution or survival for an amount equal to the recoverable medical assistance paid on behalf of the recipient or the value of the property received by the person from the recipient by distribution or survival, whichever is less. The amount recoverable from a person with respect to property of the recipient must be reduced by the value of any property transferred to the person for less than full market value for which a period of ineligibility was imposed under 53-6-166 against the recipient during the recipient's life. The department may bring an action in district court to collect upon a claim under this subsection ~~(1)(b)~~ (2).

~~(2)~~(3) A department claim under subsection (1) or (2) must include notice of the right to seek an undue

hardship exception under rules adopted by the department in accordance with subsection ~~(7)~~ (8).

~~(3)~~(4) (a) Notwithstanding any statute of limitations or other claim presentation deadline provided by law, a department claim against an estate is not barred for lack of timely presentation if it is presented in the probate proceeding within the time specified in the published notice to creditors.

(b) An action to collect a claim under subsection ~~(1)(b)~~ (2) must be commenced within 3 years of the later of the recipient's death or the closing of the recipient's estate.

~~(4)~~(5) (a) For purposes of this section, property of a deceased recipient received by distribution or survival is any real or personal property or other assets in which the recipient had any right, title, or interest immediately prior to the time of death, including but not limited to assets passing to one or more survivors, heirs, assignees, or beneficiaries of the deceased recipient through joint tenancy, tenancy in common, right of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement. For purposes of this section, property is not received by distribution or survival to the extent that the person received the property or property interest for consideration equal to the fair market value of the property or property interest received.

(b) Property received by distribution includes but is not limited to:

(i) property from a deceased recipient's estate distributed to a person through a probated estate or a small estate administration procedure; and

(ii) property from a deceased recipient's estate otherwise distributed to or in the possession of a person through any other procedure or when a legal procedure for distribution has not been followed.

(c) Assets of a deceased recipient's estate and property of a deceased recipient received by distribution or survival are not exempt from recovery under this section because the assets or property were or may have been considered by the department as exempt income or resources for the purpose of determining eligibility for medical assistance during the recipient's lifetime.

~~(5)~~(6) (a) The department may seek recovery under ~~subsection (1)(a) or (1)(b)~~ subsection (1) or (2), or both, with respect to a deceased recipient until its claim is satisfied in full. Upon full satisfaction of its claim, the department may not seek further recovery and shall provide appropriate releases to the deceased recipient's estate and to other affected persons.

(b) An estate or other person is not entitled to a reduction or waiver of the department's claim on the grounds that there is or may be another person from whom recovery may be made under this section.

~~(6)~~(7) The department may waive recovery under this section if it determines that recovery would not

be cost-effective. In determining whether recovery would be cost-effective for purposes of this subsection, the department may consider but is not limited to consideration of the following factors:

- (a) the estimated cost of recovery;
- (b) the amount reasonably likely to be recovered;
- (c) the likelihood that recovery by the department will cause a person to become eligible for public assistance; and
- (d) the importance of the case or the issues in the case and the need for judicial interpretation of issues that may recur with respect to the administration or implementation of this section.

~~(7)~~(8) (a) Upon presentation or assertion of a claim by the department under this section, the personal representative of the estate or another affected person may apply to the department, in accordance with procedures established by department rule, for a waiver of recovery based on undue hardship. The department shall waive its recovery under this section in whole or in part if it determines that recovery would result in undue hardship as defined by department rule.

(b) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be amended, and that implement federal regulations and policies, establishing procedures and criteria for undue hardship exceptions. The rules adopted under this section must include but are not limited to rules addressing the following:

- (i) a description of the circumstances considered to constitute an undue hardship;
- (ii) the procedures by which an individual may seek an undue hardship exception;
- (iii) the persons entitled to an undue hardship exception; and
- (iv) whether an exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted.

(c) If a person is aggrieved by a department determination on an application for an undue hardship exception, the person may assert a claim of entitlement to an undue hardship exception in any court proceeding on a department petition for allowance of an estate claim or for recovery of an amount due under this section. When a person claims entitlement to an undue hardship exception in the proceeding, the court shall make a determination on the claim for an exception based upon the department rules adopted in accordance with this section. Department denial of all or any part of the relief requested in an exception application under this section may be reviewed by a district court only as provided in this subsection ~~(e)~~ (8)(c). Denial does not grant a right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure Act or the

department's rules.

~~(8)(9)~~ (a) Except as provided in subsection ~~(8)(b)~~ (9)(b), if the requirements of this section are met, the department may collect upon its claim.

(b) The department may not recover under this section while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection ~~(b)~~ (9)(b) does not preclude the department from recovering from the recipient's estate after the death of the surviving spouse or child.

~~(9)(10)~~ All money recovered under this section from any source must be distributed to the state general fund and to the United States as required by applicable state and federal laws and regulations."

Section 4. Section 53-6-168, MCA, is amended to read:

"53-6-168. Payment of certain funds of deceased recipient to department. (1) (a) A nursing facility, a financial institution, or a person, ~~other than a financial institution~~, holding personal funds of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days following the resident's death, pay those funds to the department.

(b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the deceased resident's personal funds that are held by the nursing facility and that would have been payable to the facility from the resident's funds. The facility shall pay the remaining funds to the department as required by this section.

(c) Funds paid to the department under this section are not considered to be property of the deceased resident's estate, and 53-6-167 does not apply to recovery of the funds by the department.

(2) For purposes of this section, a nursing facility is holding personal funds of a resident if the facility:

- (a) maintains possession of the funds in the facility; or
- (b) as the recipient's trustee or representative, has deposited the resident's funds in an individual or shared account in a financial institution.

(3) The department shall apply any funds received under this section proportionately to the federal and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled by law to the funds."

Section 5. Section 53-6-178, MCA, is amended to read:

"53-6-178. Department right of recovery -- limitations. (1) Except as provided in 53-6-180, 53-6-182,

and this section, the department may collect upon its lien as provided in 53-6-171 through 53-6-188.

(2) The department may not recover upon a lien imposed on the recipient's home under 53-6-171 while the recipient's sibling or child who has resided lawfully and continuously in the home for at least ~~1 year~~ 18 months immediately before the recipient's institutionalization continues to lawfully reside in the home. This subsection does not preclude the department from recovering under 53-6-167, 53-6-168, or 53-6-169.

(3) The department may not recover on a lien imposed under 53-6-171 while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection does not preclude the department from later recovery in accordance with 53-6-181."

Section 6. Effective date. [This act] is effective July 1, 2009.

- END -

I hereby certify that the within bill,
SB 0082, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2019.

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 82

INTRODUCED BY D. STEINBEISSER

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

AN ACT GENERALLY REVISING LAWS RELATING TO RECOVERY OF MEDICAID BENEFITS FOR SERVICES PAID ON BEHALF OF MEDICAID RECIPIENTS; REMOVING THE COUNTY FROM THE RECOVERY OF MEDICAID BENEFITS PROCESS; PROVIDING DEFINITIONS; AMENDING SECTIONS 53-2-612, 53-6-165, 53-6-167, 53-6-168, AND 53-6-178, MCA; AND PROVIDING AN EFFECTIVE DATE.



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill #	SB0082	Title:	Clarify Medicaid third party liability
Primary Sponsor:	Steinbeisser, Donald J	Status:	Select status

- | | | |
|---|--|--|
| ☐ Significant Local Gov Impact | ☐ Needs to be included in HB 2 | ☐ Technical Concerns |
| ☐ Included in the Executive Budget | ☐ Significant Long-Term Impacts | ☐ Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL ANALYSIS

Assumptions:

This bill has no fiscal impact to the state.

Sponsor's Initials

Date

Budget Director's Initials

Date

MINUTES

MONTANA SENATE 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: VICE CHAIRMAN TERRY MURPHY, on January 23, 2009
at 3:00 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Terry Murphy, Vice Chairman (R)
Sen. Greg Hinkle (R)
Sen. Carol C. Juneau (D)
Sen. Cliff Larsen (D)

Members Excused:

Sen. Roy Brown, Chairman (R)
Sen. Dave Lewis (R)
Sen. Trudi Schmidt (D)

Members Absent: None.

Staff Present: Joan Linkenbach, Committee Secretary
Lisa Mecklenberg Jackson, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 82, 1/16/2009; SB 119, 1/16/2009

Executive Action: SB 79, SB 82, SB 119, SB 226

HEARING ON SB 119

Opening Statement by Sponsor:

00:01:09 **SEN. JOHN ESP (R), SD 31**, opened the hearing on **SB 119**, Medicaid buy-in option for individuals with disabilities.

Proponents' Testimony:

00:03:25 Hank Hudson, Montana Public Health and Human Services (MPHHS)

00:05:11 Rita Charles, American Association of Retired Persons (AARP)

EXHIBIT (phs16a01)

00:07:20 Travis Hoffman, Montana Independent Living Centers (MILC)

EXHIBIT (phs16a02)

00:10:38 Doug Amsden, Living Independently For Today and Tomorrow (LIFTT)

EXHIBIT (phs16a03)

00:12:29 Jim Brown, Disabled Citizen

EXHIBIT (phs16a04)

00:16:37 Theresa Gardner, Disabled Citizen

EXHIBIT (phs16a05)

00:17:56 Michael Beers, Disabled Citizen

00:22:36 Shyla Patera, North Central Independent Living Services, Inc. (NCILSI)

EXHIBIT (phs16a06)

00:25:45 Mark Sanders, NCILSI

00:27:28 Harold Eyre, LIFTT

EXHIBIT (phs16a07)

00:28:55 Amanda Edwards, Big Fork, Summit Independent Living
Centers (SILC)

EXHIBIT (phs16a08)

00:32:11 Margaret Keener, Project Director, NCILSI

EXHIBIT (phs16a09)

00:34:04 Mike Mayer, Director, SILC

00:41:28 Jan Cahill, Director, Montana Association of Community
Disabled Services (MACDS)

00:41:58 Anita Rassmann, Disability Rights of Montana (DROM)

00:36:58 Darren Larson, Disabled Citizen

EXHIBIT (phs16a10)

00:39:08 Doug Zander, Consumer

00:43:34 Pat Melby, Montana Medical Association (MMA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:44:13 Sen Schmidt

00:44:54 Mr. Beers

00:45:03 Sen. Schmidt

00:45:13 Sen. Juneau

00:45:31 Mr. Hudson, MPHHS

00:46:48 Sen. Juneau

00:47:01 Mr. Hudson, MPHHS

00:47:27 Sen. Larsen

00:47:50 Mr. Hudson, MPHHS

00:49:39 Sen. Larsen

00:50:03 Mr. Hudson

00:50:33 Sen. Schmidt

00:50:51 Mr. Hudson, MPHHS

00:51:12 Sen. Schmidt

00:51:27 Mr. Hudson, MPHHS

Closing by Sponsor:

00:52:13 Sen. Esp

EXECUTIVE ACTION ON SB 119

01:02:58 **Motion:** SEN. SCHMIDT moved that **SB 119 DO PASS.**

Discussion:

01:03:15 Sen. Juneau

01:03:29 **Vote:** Motion carried unanimously by voice vote. Sen. Lewis and Sen. Brown voted by proxy.

01:04:21 Sen. Murphy

HEARING ON SB 82

Opening Statement by Sponsor:

01:04:39 **SEN. DONALD STEINBEISSER (R), SD 19,** opened the hearing on **SB 82,** Clarify Medicaid third party liability.

Proponents' Testimony:

01:07:35 Jeff Buska, Administrator, Department of Public Health and Human Services (DPHHS)

01:19:22 Steve Yeakel, Montana Independent Bankers (MIB)

01:20:06 Steve Turkiewicz, Montana Bankers Association (MBA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

01:21:01 Sen. Juneau

01:21:46 Mr. Buska, DPHHS

01:22:29 Sen. Schmidt

01:22:41 Mr. Buska, DPHHS

01:23:34 Sen. Juneau

01:23:48 Mr. Buska, DPHHS

01:24:18 Sen. Juneau

01:24:49 Mr. Buska, DPHHS

Closing by Sponsor:

01:25:09 Sen. Steinbeisser

01:26:05 Chairman Brown returned and assumed the chair.

EXECUTIVE ACTION ON SB 226

01:27:37 **Motion:** SEN. SCHMIDT moved that **SB 226 DO PASS.**

Discussion:

01:27:54 Sen. Hinkle

01:29:24 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 79

01:30:06 **Motion:** SEN. JUNEAU moved that **SB 79 DO PASS.**

01:30:18 **Motion:** SEN. JUNEAU moved that **SB 79 BE AMENDED.**

EXHIBIT (phs16a11)

Discussion:

01:30:55 Lisa Jackson

01:32:01 Chairman Brown

01:32:39 Sen. Juneau

01:33:23 Sen. Brown

01:33:47 Sen. Juneau

01:35:27 Sen. Schmidt

01:35:49 Sen. Juneau

01:36:48 Sen. Murphy

01:38:07 Sen. Hinkle

01:38:37 Sen. Juneau

01:39:01 **Vote:** Motion carried unanimously by voice vote.

01:39:32 **Motion:** Sen. Juneau moved that **SB 79 DO PASS AS AMENDED.**

Discussion:

01:39:51 Sen. Schmidt

01:40:43 Chairman Brown

01:41:01 Sen. Juneau

01:41:56 Sen. Schmidt

01:42:16 Sen. Murphy

01:43:47 Sen. Schmidt

01:44:28 Sen. Hinkle

01:45:51 **Vote:** Motion carried unanimously by voice vote.

01:46:03 Chairman Brown

01:46:26 Sen. Larsen

01:46:36 Chairman Brown

EXECUTIVE ACTION ON SB 82

01:47:24 **Motion/Vote:** SEN. JUNEAU moved that **SB 82 DO PASS.**
Motion passed unanimously by voice vote.

ADJOURNMENT

Adjournment: 5:20 P.M.

JOAN LINKENBACH, Secretary

j1

Additional Exhibit:

[EXHIBIT \(phs16a12\)](#)

Additional Documents:

EXHIBIT ([phs16aad.pdf](#))

BUSINESS REPORT

**MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION**

SENATE PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

Date: Friday, January 23, 2009
Place: Capitol

Time: 3:00 pm
Room: 317-A

BILLS and RESOLUTIONS HEARD:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

SB 82, SB 119

EXECUTIVE ACTION TAKEN:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

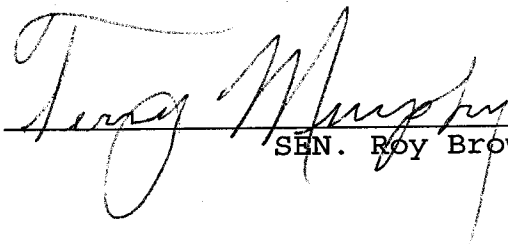
SB 119 - Do Pass _____

SB 226 - Do Pass _____

SB 79 - Do Pass _____

SB 82 - Do Pass _____

COMMENTS:


SEN. Roy Brown, Chairman

DATE: 1-23-09

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SENATE STANDING COMMITTEE REPORT

January 24, 2009

Page 1 of 1

Mr. President:

We, your committee on **Public Health, Welfare and Safety** recommend that **Senate Bill 119**
(first reading copy -- white) **do pass.**

Signed:


Senator Roy Brown, Chair

- END -

Committee Vote:

Yes 7, No 0

Fiscal Note Required ☐

SB0119001SC.sdr

DB



SENATE STANDING COMMITTEE REPORT

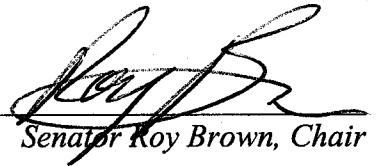
January 24, 2009

Page 1 of 1

Mr. President:

We, your committee on **Public Health, Welfare and Safety** recommend that **Senate Bill 226** (first reading copy -- white) **do pass**.

Signed: _____


Senator Roy Brown, Chair

- END -

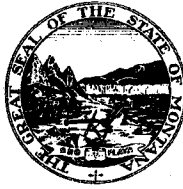
Committee Vote:

Yes 7, No 0

Fiscal Note Required ☐

SB0226001SC.sdr





SENATE STANDING COMMITTEE REPORT

January 24, 2009

Page 1 of 1

Mr. President:

We, your committee on **Public Health, Welfare and Safety** recommend that **Senate Bill 79** (first reading copy -- white) **do pass as amended.**

Signed: _____


Senator Roy Brown, Chair

And, that such amendments read:

1. Page 1, line 30.

Following: "50-5-101,"

Insert: "including federal facilities,"

2. Page 2, line 24.

Strike: "and"

3. Page 2, line 26.

Following: "residents"

Strike: "."

Insert: "; and"

Following: line 26

Insert: "(3) emergency medical service provided by an ambulance company located in a county with a population of 20,000 residents or more, from a community within that county with a population of 1,500 residents or less to a health care facility in that county."

- END -

Committee Vote:

Yes 7, No 0

Fiscal Note Required __

SB0079001SC.sdr





SENATE STANDING COMMITTEE REPORT

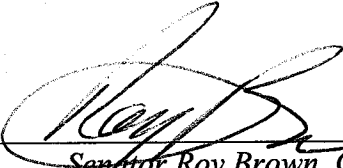
January 24, 2009

Page 1 of 1

Mr. President:

We, your committee on **Public Health, Welfare and Safety** recommend that **Senate Bill 82** (first reading copy -- white) **do pass**.

Signed: _____


Senator Roy Brown, Chair

- END -

Committee Vote:

Yes 7, No 0

Fiscal Note Required ☐

SB0082001SC.sdr



**AUTHORIZED
SENATE COMMITTEE PROXY**

I request to be excused from Public Health Committee because of other commitments. I desire to leave my proxy vote with:

Sen. Murphy

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

[illegible][illegible]

Sen.

(Signature)

Date _____

AUTHORIZED SENATE COMMITTEE PROXY

I request to be excused from Public Health committee because of other commitments. I desire to leave my proxy vote with:

Senator Murphy

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT AYE NO

SB 119	X	

BILL/AMENDMENT AYE NO

sen. Dane Leary
(Signature)

Date 1-23-2009

MONTANA STATE SENATE
Visitors Register

Public Health, Welfare, and Safety Committee

Date 1-23-09

Bill No. 119 **Sponsor(s)** ESP

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Name and Address	Representing	Support	Oppose	Inf.
Rita Charley - Helena	AARP	✓		
Shyla Patera	NCILS	✓		
Mark Sanders	NCILS	✓		
Jim Brown		✓		
Harold Eyre	LIFTT	✓		
Douglas Zander		✓		
MARGARET KERNER	NCILS	✓		
Theresa Gaudner		✓		
Robert Johnson	DPHHS/OLD			✓
BARBARA KRISKOVICH	DPHHS			
Lee Thompson	AMND/DPHHS	✓		
Anta Rasmussen	Disability Rts Mt.	✓		
Pat Melby	Mt. Meel Ass'n	✓		
JAN CATHAL	MACDS	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE

Visitors Register

Public Health, Welfare, and Safety Committee

Date 1-23-09

Bill No. 82 Sponsor(s) Steinbeisser

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[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: Chairwoman Arlene Becker, on March 4, 2009 at 3:00 P.M., in Room 152 Capitol

ROLL CALL

Members Present:

Rep. Arlene Becker, Chairwoman (D)
Rep. Mary Caferro, Vice Chairwoman (D)
Rep. Pat Ingraham, Vice Chairwoman (R)
Rep. Bill Beck (R)
Rep. Julie French (D)
Rep. Timothy Furey (D)
Rep. David Howard (R)
Rep. Chuck Hunter (D)
Rep. Dave McAlpin (D)
Rep. Michael More (R)
Rep. Pat Noonan (D)
Rep. Ken Peterson (R)
Rep. Diane Sands (D)
Rep. Cary Smith (R)
Rep. Ron Stoker (R)
Rep. Jeffery Welborn (R)

Members Excused: None

Members Absent: None

Staff Present: Santella Baglivo, Committee Secretary
Sue O'Connell, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 82, 2/23/2009; SB 119,
2/23/2009; SB 208, 2/23/2009

Executive Action: None

HEARING ON SB 208

Opening Statement by Sponsor:

00:02:15 Sen. Dave Lewis (R), SD 42, opened the hearing on
SB 208, Include nonprofit hospital employees in county
health plan.
00:02:16 Chairwoman Becker leaves.
00:03:47 Rep. Beck enters.

Proponents' Testimony:

00:05:12 John Flink, Montana Hospital Association
00:05:57 Sheryl Wood, Montana Association of Counties

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:08:36 Rep. Sands
00:09:07 Sen. Lewis
00:09:52 Rep. Furey
00:10:52 Sen. Lewis
00:11:17 Mr. Flink
00:11:49 Rep. Stoker
00:12:46 Sen. Lewis
00:13:58 Rep. Hunter
00:14:07 Rep. Sands
00:14:28 Ms. Wood

Closing by Sponsor:

00:16:08 Sen. Lewis

HEARING ON SB 119

Opening Statement by Sponsor:

00:16:42 Sen. John Esp (R), SD 31, opened the hearing on SB 119, Medicaid buy-in option for individuals with disabilities.

EXHIBIT (huh48a01)

Proponents' Testimony:

00:18:40 Anna Whiting-Sorrell, Director, Department of Public Health and Human Services (DPHHS)

00:20:58 Rita Charles, Volunteer Advocate, AARP Montana

EXHIBIT (huh48a02)

00:21:17 Rep. Peterson enters.

00:22:06 Travis Hoffman, Montana Independent Living Centers

00:27:48 Shyla Patera, Self, Great Falls, Montana

00:30:28 Jim Brown, Self, Billings, Montana

EXHIBIT (huh48a03)

00:31:47 Rep. Ingraham and Rep. French enter.

00:35:51 Mark Sanders, Self, Helena, Montana

00:38:35 Mike Mayer, Summit Independent Living Center, Missoula, Montana

00:41:33 Eve Franklin, Policy Advisor on Families, Governor's Office

00:44:30 Brian McGowan, Community Mental Health Center

00:45:03 Amanda Edwards, Self, Big Fork, Montana

EXHIBIT (huh48a04)

00:47:28 Tom Osborn, Independent Living Centers, Black Eagle, Montana

00:48:46 Anita Roessmann, Disability Rights Montana

00:49:51 Chairwoman Becker enters.

00:49:59 Matt Kuntz, Executive Director, National Alliance on Mental Illness, Montana

00:51:38 Jude Monson, Summit Independent Living Center

EXHIBIT (huh48a05)

00:54:48 Erin MacLean, Montana Medical Association

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:55:37 Rep. Furey

00:56:20 Mr. Hoffman

00:56:45 Rep. Furey

00:57:08 Mr. Hoffman
 00:58:12 Rep. Ingraham
 00:58:48 Sen. Esp
 00:59:02 Rep. Ingraham
 00:59:08 Sen. Esp
 00:59:27 Rep. Beck
 00:59:50 Sen. Esp
 01:00:14 Rep. Beck
 01:00:38 Sen. Esp
 01:00:41 Rep. Beck
 01:00:55 Sen. Esp
 01:01:28 Rep. Beck
 01:01:53 Sen. Esp
 01:02:32 Rep. Beck
 01:02:45 Linda Snedigar, DPHHS
 01:04:04 Rep. Beck
 01:04:20 Ms. Snedigar
 01:05:34 Rep. Furey
 01:06:49 Mr. Mayer
 01:08:32 Rep. Ingraham
 01:09:09 Ms. Snedigar
 01:09:53 Vice Chairwoman Caferro
 01:11:00 Mr. Brown
 01:12:27 Vice Chairwoman Caferro
 01:12:32 Mr. Hoffman
 01:15:28 Vice Chairwoman Caferro
 01:15:36 Mr. Hoffman

Closing by Sponsor:

01:16:31 Sen. Esp

HEARING ON SB 82

Opening Statement by Sponsor:

01:19:32 Sen. Donald Steinbeisser (R), SD 19, opened the hearing on SB 82, Clarify Medicaid third party liability.

Proponents' Testimony:

01:21:59 Jeff Buska, Administrator, Quality Assurance Division, DPHHS

EXHIBIT (huh48a06)

01:35:05 Steve Yeakel, Montana Independent Bankers
 01:36:37 Steve Turkiewicz, Montana Banking Association

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

01:37:35 Rep. French

01:37:55 Mr. Turkiewicz

Closing by Sponsor:

01:38:19 Sen. Steinbeisser

Announcements:

01:38:53 Chairwoman Becker

EXHIBIT(huh48a07)

01:41:04 Rep. Ingraham

ADJOURNMENT

01:41:39 Adjournment: 4:41 P.M.

Santella Baglivo, Secretary

sb

Additional Documents:

EXHIBIT ([huh48aad.pdf](#))

BUSINESS REPORT

**MONTANA HOUSE OF REPRESENTATIVES
61st LEGISLATURE - REGULAR SESSION**

HOUSE HUMAN SERVICES COMMITTEE

Date: Wednesday, March 4, 2009
Place: Capitol

Time: 3:00 pm
Room: 152

BILLS and RESOLUTIONS HEARD:

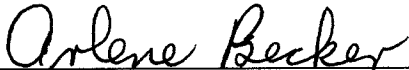
Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

SB 82, SB 119, SB 208

EXECUTIVE ACTION TAKEN:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

COMMENTS:



REP. Arlene Becker, Chairman

HOUSE OF REPRESENTATIVES
Roll Call
HUMAN SERVICES COMMITTEE

DATE: 3/4/09

	<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
-	Rep. Mary Caferro	X	
○	Rep. Pat Ingraham	X	
-	Rep. Bill Beck	X	
⊖	Rep. Julie French	X	
-	Rep. Timothy Furey	X	
-	Rep. David Howard	X	
-	Rep. Chuck Hunter	X	
-	Rep. Dave McAlpin	X	
-	Rep. Michael More	X	
-	Rep. Pat Noonan	X	
○	Rep. Ken Peterson	X	
-	Rep. Diane Sands	X	
-	Rep. Cary Smith	X	
-	Rep. Ron Stoker	X	
-	Rep. Jeffery Welborn	X	
⊖	Rep. Arlene Becker	X	

**Montana House of Representatives
Visitors Register**

HUMAN SERVICES COMMITTEE

Date 3/4/09

Bill No. SB 119 **Sponsor(s)** Sen. Esp

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Name and Address	Representing	Support	Oppose	Inf.
Rita Charles	AARP	✓		
Brian McGowan	community mental health	✓		
Tora Osborn	NCILS	✓		
Micki Mayer	Summit ILC	✓		
David Hoffman	MT CILS	✓		
Julaine "Jude" Monsen	Summit ILC	✓		
Amanda M. Edwards	Summit ILC	✓		
Mark Sanders	NCILS	✓		
Glenn E. Preece	NCILS	✓		
Jim Brown		✓		
Ann W. Sorrell	DPHHS	✓		
Erin MacLean	MT Medical Assoc	✓		
ANITA ROESSMAN/N	DISABILITY RTS MT	✓		
M. H. Kuntz	NAMI Montana	✓		
FRANK COTE	IBC BSMY	✓		
Linda Snedigar	DPHHS - International			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

**Montana House of Representatives
Visitors Register**

HUMAN SERVICES COMMITTEE

Date 3/4/09

Bill No. SB 208 **Sponsor(s)** Sen Lewis

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Name and Address	Representing	Support	Oppose	Inf.
Aimee GERMOLTZ	Billings Clinic	X		
John Flink	MHA	X		
Sheryl Wood	MACo	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

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**Montana House of Representatives
Visitors Register**

HUMAN SERVICES COMMITTEE

Date 3/4/09

Bill No SB 82 **Sponsor(s)** Sen. Steinbeisser

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Name and Address	Representing	Support	Oppose	Inf.
Steve Yeakel	MT Independent Banker	✓		
Steve Trukiewicz	MT Bankers Assn	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

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Senate Bill 82
Medicaid Third Party Liability
Hearing before the House Human Services Committee
March 4, 2009
Jeff Buska, Administrator, Quality Assurance Division, DPHHS

Good afternoon Madam Chair Becker and members of the committee, for the record my name is Jeff Buska, I am the Administrator of the Quality Assurance Division (QAD) of Department of Public Health and Human Services (DPHHS). I am here today to present testimony in support of Senate Bill 82.

DPHHS operates the Medicaid program; one of the requirements of operating a Medicaid program is that the State must coordinate with other liable third parties to ensure Medicaid is the payer of last resort. The function of coordinating with other liable third parties is known as Third Party Liability (TPL). Third Party Liability is operated by the Quality Assurance Division, during state fiscal year 2008 the TPL unit accounted for almost \$127 million dollars in savings by coordinating with and collecting funds from other liable third parties.

The purpose of Senate Bill 82 is to modify and clarify state laws pertaining to the Medicaid Third Party Liability (TPL) program. Specifically, this bill makes the following changes:

1. Modify MCA 53-2-612 to add language indicating Medicaid can only collect from the portion of a clients' judgment or settlement that is related to medical expenses. The U.S. Supreme Court ruled in *Arkansas v Ahlborn* that Medicaid agencies can only collect Medicaid expenses from the medical portion of any judgments or settlements. DPHHS has made operational changes to incorporate this requirement, and the Montana Code Annotated now needs to be changed to reflect this requirement.
2. Implement changes related to the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), which, exclude, from estate recovery, medical assistance paid on behalf of Medicaid recipients under Medicare Savings Plans. This includes Medicare premium payments and payments for coinsurance and deductibles on Medicare crossover claims covered under the Medicaid program.

3. Add Financial Institutions to the list of entities required to cooperate with Medicaid in the settlement of estate cases. Medicaid recipients are allowed to retain personal funds up to a limited amount (\$2,000). State and Federal laws require that those personal funds be paid to the State Medicaid Agency (DPHHS) upon the death of the recipient. Typically these personal funds are administered by the nursing facility; however, some personal funds are maintained by guardians or family members using private bank accounts. Currently, Financial Institutions with those private bank accounts are not required to remit those funds upon death of the Medicaid recipient. This has caused problems with compliance regarding the federal law when funds are not returned. Sometimes these funds become unclaimed funds and are not remitted to DPHHS. This change does not require financial institutions to track which of their clients are enrolled in Medicaid. It is the responsibility of DPHHS to identify Medicaid clients who have died and are subject to recovery under this statute. DPHHS will communicate directly with the financial institution to recover the monies.

4. Modify MCA 53-6-167 to clarify that the department is not required to initiate probate in order to collect under this section. DPHHS was involved in a recent legal action related to this topic and prevailed. This change codifies the courts' decision.

5. Eliminate the reference to county in MCA 53-2-612. The county references pertain to medical programs under general assistance programs and medical programs for state assumed counties. The MCA was set up several years ago for Medicaid benefit recoveries and benefit recoveries for these county medical programs. Since county general assistance programs and medical programs under state assumed counties no longer exist the county references in the code are no longer needed.

6. Modify the hardship provisions in MCA 53-6-178 to eliminate inconsistencies with other sections of the MCA 53-6-171. Make both sections of the law consistent for administration, eliminate confusion.

As Senator Steinbeisser stated this bill strengthens the financial integrity of the Medicaid program by making sure that Medicaid is the payer of last resort. This bill coupled with other existing laws balances the financial obligations of the Medicaid program, with the rights and protections of individuals served by the Medicaid program. While, SB 82 does not address exemptions to estate recovery, it is important for this

committee to know that the Department is prohibited from recovering from estates if there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. Additionally, the MCA outlines hardship provisions that may be applied. Finally, there are exemptions for certain assets of Native Americans.

In summary this bill will contribute to the sustainability of the Medicaid program and more importantly continued services for needy Montanans. The bill memorializes recent state and federal court decisions, modifies Montana code to implement changes in federal requirements, and modifies laws to improve the efficiency and effectiveness of DPHHS administration of the Medicaid program.

Thank you for your time and attention, I am available to answer your questions regarding this bill.